IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 33206 of 2006(C)

PETITIONER:

K.ALEYAMMA VARGHESE,
OLIYIL HOUSE, VETTIKKAL P.O.,
MULANTHURUTHY VIA, ERNAKULAM DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   THIRUVANANTHAPURAM.

3. **THE DISTRICT EDUCATIONAL OFFICER,**
   ERNAKULAM.

4. **THE ASSISTANT EDUCATIONAL OFFICER,**
   TRIPUNITHURA, ERNAKULAM DISTRICT.

5. **THE MANAGER,**
   ST.THOMAS L.P.SCHOOL, VETTIKKAL,
   MULAMTHURUTHY VIA, ERNAKULAM DISTRICT.

6. **REV.DR.ADAI JACOB,**
   MALANKARA SYRIAN ORTHODOX THEOLOGICAL
   SEMINARY, UDAYAGIRI.

BY ADV. SRI.ABRAHAM VAKKANAL for R5 & R6
SRI.PAUL ABRAHAM VAKKANAL
SRI.BIJIMON C.CHERIAN
BY GOVT.PLEADER SRI. P. NANDAKUMAR for R1 to R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.33206/2006 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE STAFF MANAGEMENT OF ST.THOMAS L.P.S. VETTICKAL APPROVED BY THE EDUCATIONAL AUTHORITIES.**

EXT.P2: **COPY OF THE COMMUNICATION NO.F5.115340/92/DPI/L.DIS. DTD. 19/11/992.**

EXT.P3: **COPY OF THE NOTICE NO.F5/30937/05/DPI DTD. 16/08/2005.**

EXT.P4: **COPY OF THE WRITTEN STATEMENT DTD. 24/08/2005 BEFORE THE HON'BLE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTION (ACADEMIC).**

EXT.P5: **COPY OF THE ORDER NO.K.DIS.30937/05/F5/DPI DTD.28/10/05.**

EXT.P6: **COPY OF THE ORDER NO.GO(RT) NO.4900/06/G.EDN. DTD. 10/11/2006.**

5TH RESPONDENT'S EXHIBITS:

EXT.R5(A): **COPY OF THE PROCEEDINGS NO.K.DIS.64.1439/73 OF THE R.D.D.P.I. ERNAKULAM DTD. 17/03/1973.**

EXT.R5(B): **COPY OF DECISIONS TAKEN IN THE MEETING OF MANAGING BODY OF THE SCHOOL DTD. 27/11/2006.**

EXT.R5(C): **COPY OF THE LETTER FROM THE 6TH RESPONDENT TO THE HEADMISTRESS DTD. 27/11/2006.**

EXT.R5(D): **COPY OF THE MINUTES OF THE EXECUTIVE COMMITTEE OF MSOTS DTD. 11/12/2006.**

EXT.R5(E): **COPY OF THE RULES OF THE SCHOOL FRAMED BY THE NEW MANAGEMENT DTD. 11/12/2006.**

EXT.R5(F): **COPY OF THE DECISION OF THE PTA MEETING DTD. 12/12/2006.**

EXT.R5(G): **COPY OF THE RESOLUTION PASSED IN THE PTA MEETING DTD. 12/12/2006.**

/TRUE COPY/

KSS

K.K.DENESAN, J.

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WP(C).No.33206 of 2006-C.

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Dated this the 24th day of January, 2007.

J U D G M E N T

Heard counsel for the petitioner, counsel for respondents 5 and 6 and Government Pleader for respondents 1 to 4.

2. In the nature of the order I propose to pass and having regard to the principal question of law that has surfaced requiring discussion, I think, this writ petition can be disposed of by a short order. I say so, because, just one contention alone need be adverted to and no other point to dispose of this writ petition.

3. Ext.P6 is under challenge. The Government as per Ext.P6 have disposed of the appeal filed by the 6th respondent granting permission to transfer the school managed by the 5th respondent to Malankara Syrian Orthodox Theological Seminary, Vettikkal, Ernakulam, subject to the condition laid down in Rule 5A & 5A(3) of Chapter III of Kerala Education Rules.

4. The order impugned before the Government in appeal, ie, Ext.P5, was passed after affording an opportunity of being heard to the petitioner also. The 2nd respondent, having regard to the contentions of the

petitioner also took the view that the request for change of management including ownership was liable to be rejected. Feeling aggrieved, the 6th respondent filed appeal. Government passed Ext.P6 order setting aside Ext.P5 without notice to the petitioner.

5. It is contended that the petitioner ought to have been afforded an opportunity of being heard before disposing of the appeal filed against Ext.P5. Govt. Pleader and the counsel for respondents 5 and 6 submit that the petitioner who was a member of the teaching staff (now retired) has no legal right to be heard in a matter relating to the change of management under the K.E.R. Counsel for the petitioner submits that the above contention is without force, because, it is admitted position that she was afforded an opportunity of being heard and her contentions were taken into consideration by the 2nd respondent. Still further, upholding those contentions, the request for change of management was rejected. Hence, the petitioner is entitled to say, without anything more, that the 1st respondent which considered the appeal filed against Ext.P5 ought to have afforded an opportunity of being heard to the petitioner - beneficiary of Ext.P5, before unsettling that order.

6. I find force in the above submission. In the

peculiar facts of this case, I feel that Ext.P6 order is vitiated for violation of the principles of natural justice. Accordingly, Ext.P6 is set aside but without expressing any opinion on the merits of the case. It follows that the 1st respondent shall have the right to pass a fresh order after affording an opportunity of being heard to the petitioner, as also respondents 5 and 6. Ordered accordingly.

7. Having regard to the urgency pointed out by the counsel for respondents 5 and 6, I am inclined to direct the 1st respondent to expedite the hearing and dispose of the matter in accordance with law within the shortest possible time. At any rate, this shall be done in a month's time on receipt of a copy of this judgment.

The writ petition is disposed of accordingly.

K.K.DENESAN, JUDGE.

kvs/-